

MT LEGISLATIVE HISTORY

Chapter 212 1987

Bill (H) 81 S _____

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 13 ✓ C

Hearing Date(s) Feb 12 ✓ C

_____ C

Mar 04 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out Jan 13 ✓ C

Mar 04 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
81	1/5/87	1/13/87	1/13/87			1/13/87					
82	1/8/87	1/13/87	1/16/87			1/16/87					
89		2/12/87	failed to meet deadline								
95	1/7/87	1/15/87	1/15/87	1/15/87							
110	1/8/87	2/4/87	2/14/87		2/14/87						
111	1/8/87	2/4/87	2/14/87		2/14/87						
112	1/8/87	1/28/87	2/14/87								
120	1/9/87	1/14/87	1/22/87	tabled							
123	1/9/87	1/15/87	2/14/87			2/14/87					
127		2/16/87	failed to meet deadline								
134	1/9/87	1/15/87	1/15/87			1/15/87					
135	1/10/87	1/16/87	1/23/87	(tabled 2/20/87)							
139	1/12/87	1/19/87	1/19/87			1/19/87					
141	1/12/87	1/26/87	1/27/87			1/27/87					

Rep. Cobb asked Mr. McRea if the main reason for the bill had to do with department attorney shortage and was this an administrative way of taking care of the problem. Mr. McRea stated the main reason is not the insurance. The insurance is already taken care of and provided by a section of law, 40-04-204, sub-part three. The department is asking for a mechanism to enforce that law.

Rep. Jan Brown closed the hearing on HB #79.

HOUSE BILL NO. 81: Rep. Jan Brown, House District #46, Helena, stated House Bill No. 81 clarifies administrative support orders established by the Department of Revenue may not be retroactively modified.

PROPOSERS: John McRea, Department of Revenue, Child Support Enforcement Program, stated a need exists to amend section 40-5-227 and unless this amendment is made, Montana may be subject to federal sanctions. Interstate cases that are subject to retroactive modifications are not recognizable under the full faith and credit clause of the U.S. Constitution and therefore, when an order is sent to another state to be enforced, it is not acted upon or recognized because it is not a final order. He stated the language referring to the default orders needs to be stricken and with that, Montana would be in full compliance with the Budget Reconciliation Act.

No further proponents and no opponents.

Rep. Jan Brown closed the hearing on HB #81.

HOUSE BILL NO. 82: Rep. Jan Brown, sponsor, stated House Bill No. 82 clarifies the rights of the Department of Revenue and recipients of public assistance regarding assigned support rights.

PROPOSERS: John McRea, representing the Child Support Enforcement Program, Department of Revenue, stated the process of the child support program has worked well but problems have developed over the years. One of the problem areas is when a recipient assigns the support and eventually loses interest in the support obligation. When a recipient knows the A.F.D.C. money is coming in on a regular basis, they do not care if the obligator pays the full amount of support money or not. They often enter into modification agreements that sometimes totally terminate the individual support obligation and sometimes all the arrears are waived. The result of all these modification efforts are to frustrate the state effort to reimburse itself for A.F.D.C. that is being paid out. The department must then go to the court system to straighten these situations out and the problem

ACTION ON HOUSE BILL NO. 81: Rep. Hannah had questions regarding a respondent missing a court hearing which was a provision the legislature put in last session. He stated he wondered if this provision was taken out now, what jeopardy are we going to be in with the federal government. He felt the provision should be left the way it is. Rep. Mercer pointed out if we allow a district court to modify it, we are going to be in compliance with the federal program. Rep. Gould commented when we talk about losing federal money, we should consider the certificate of need legislation which came about years ago when the federal government said any state that did not pass the certificate of need legislation would lose federal help dollars. In 1981, they said if we do not strengthen the laws on this certificate, we would lose federal health dollars. We had two bills, one to abolish and one to strengthen the certificate of need. The legislature killed both bills. Many threats are just threats. Rep. Hannah stated this is a bad piece of legislation and moved to DO NOT PASS. Rep. Mercer stated this is one area that is not worth taking a risk and losing federal government funding. Rep. Brown made a substitute motion to DO PASS. Chairman Lory asked the staff attorney, John MacMaster, if an amendment needed to be made regarding a new section dealing with rule making authority. Mr. MacMaster stated there is a difference between district court review of an administrative order and district court modification of an administrative order. He further explained that subsection two on page two talks about an administrative order being filed with the court and later on the court can modify that order probably because of changed circumstances. Most administrative orders are subject to some kind of a court review. It is not a matter of modifying the order, it is a matter of reviewing the order to see if the order is proper. Under the current law, we do not have district court review of that administrative order to see if it was properly decided unless, under current law, the order has been entered by non-appearance or default on the part of the responsible parent. If this language is taken out, there will be district court review of any administrative order, but there will be the chance to get district court modification of that order later on. Rep. Addy spoke against the motion stating that if someone can not make it to a hearing, we must look at what priority this person places on this issue. If a serious reason exists to miss a hearing, another one will be set. Rep. Giacometto moved to amend the bill. A voice vote was taken with all but two members voting in favor of the amendment. Rep. Brown made a substitute motions of DO PASS AS AMENDED. A voice vote was taken with all members favoring the motion with the exception of Rep. Gould and Rep. Hannah. HB #81 DO PASS AS AMENDED.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
EARL LORY (R)	✓		
JOHN MERCER (R)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
TOM BULGER (D)	✓		
JOHN COBB (R)	✓		
FRITZ DAILY (D)	✓		
PAULA DARKO (D)	✓		
RALPH EUDAILY (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
ED GRADY (R)		✓	✓
TOM HANNAH (R)	✓		
VERNON KELLER (R)	✓		
AL MYERS (R)	✓		
JOAN MILES (D)	✓		
PAUL RAPP-SVRCEK (D)	✓		
BILL STRIZICH (D)	✓		

VISITOR'S REGISTER

JUDICIARY

COMMITTEE

AGENCY(S)

DATE January 13, 1985

DEPARTMENT

HB# 77, 78, 79, 81,

PLEASE PRINT.....

82

NAME	REPRESENTING	SUP- PORT	OP- POSE
Bill Hanninglor	D.O.R. Child Support	X	
John Ingle	U.S. Dept Health + Human Serv	X	
John McRae	DOR - CSEP	X	
Dennis Storer	DOR - child support	X	
Mary LaGuard	OBPP		
Sandy Chaney	Women's Lobbyist Fund	X	
Debra Jones	Women's Lobbyist Fund	X	
Nina Vanelis	attorney - self	X	
Nina Vanelis	Women's Lobbyist Fund	X	
Wilbur Lehmann			
Rich Young	Stillwater County		
Dave Kelsey	" "		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

STANDING COMMITTEE REPORT

January 13,

1937

JUDICIARY

Mr. Speaker: We, the committee on
report House Bill No. 31

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

"AN ACT CLARIFYING THAT ADMINISTRATIVE SUPPORT ORDERS ESTABLISHED BY THE DEPARTMENT OF REVENUE UNDER THE CHILD SUPPORT ENFORCEMENT PROGRAM MAY NOT BE RETROACTIVELY MODIFIED; AMENDING SECTION 40-5-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

1. Page 2.

Following: line 11

Insert: "NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act."

Renumber: subsequent section

FIRST

white

reading copy ()
color

FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) JUDICIARY

PAGE NBR..... 188
RUN TIME08:32
RUN DATE.... 04/22/87

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0079	1/28	2/12		CONCUR		3/4
BROWN, JAN			ALLOW DOR TO REQUIRE HEALTH COVERAGE WHEN CHILD SUPPORT IS BEING ENFORCED			
HB0081	1/21	2/12		CONCUR AS AMENDED		3/4
BROWN, JAN			CLARIFY THAT ADMIN. SUPPORT ORDER OF DOR MAY NOT BE RETROACTIVELY MODIFIED			
HB0082	1/28	2/12		CONCUR		3/4
BROWN, JAN			RIGHTS OF DOR AND RECIPIENTS OF PUBLIC ASSISTANCE AS TO ASSIGNED SUPPORT			
HB0095	1/22	2/10		ADVERSE REPORT		3/5
ADDY, KELLY			ELIMINATE ANNUAL ACCOUNTING BY GUARDIANS AND CONSERVATORS			
HB0123	2/21	3/11		CONCUR AS AMENDED		3/11
BRADLEY, DOROTHY			HIRING RETIRED JUDGES OR QUALIFIED LAWYERS AS TEMPORARY JUDGES			
HB0134	1/22	2/10		CONCUR AS AMENDED		3/3
ADDY, KELLY			NO PUBLICATION REQUIRED WHEN PARENTS/GUARDIANS CONSENT TO NAME CHANGE			
HB0139	1/24	3/04		CONCUR		3/4
KOEHNKE, FRANCIS			MINIMUM COMPENSATION PROVISIO IN SCENE OF INJURY GOOD SAMARITAN LAW			
HB0141	2/02	3/17		CONCUR		3/17
BARDANOUVE, FRANCIS			CREATE FEE FOR FILING MOTION FOR JUDGE SUBSTITUTION IN CIVIL CASES			
HB0146	3/02	3/24		CONCUR		3/27
SPAETH, GARY			IRRIGATION DITCH EMPLOYEE CIVIL SUIT IMMUNITY			
HB0163	2/16	3/09		CONCUR AS AMENDED		3/16
MERCER, JOHN			PROVIDING DEFINITION OF "UNDER THE INFLUENCE"; REPLACING EXISTING STANDARD			
HB0167	3/02	3/12		CONCUR AS AMENDED		3/24
GILBERT, BOB			LIMITING RIGHT TO RECOVER DAMAGES FOR EMOTIONAL OR MENTAL DISTRESS			

court. He said the department only has 3 staff attorneys and 56 counties where these health insurance cases could exist. He stated the department would like to use an administrative law process instead of the district court process. He felt it will save time and money. He said it also keeps the department out of court. He also said if an individual doesn't pay the health insurance policy for his children and has been notified of it, then he can be assessed \$100 a month until he pays it. The individual would have an administrative hearing before the assessment starts to determine if the individual has paid or not.

Sandy Chaney, Women's Lobbyist Fund, supported both, House Bill 77 and House Bill 79. (Exhibit 3)

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 79: Senator Yellowtail asked when the \$100 assessment would start. Mr. McRae said the fine starts at the time the notice order is sent out.

Senator Halligan asked if this meant the department's order or the insurance company's order. Mr. McRae said it is the department order that would start it. He said if the person can show he has paid the insurance, then the \$100 fine and proceedings is dropped.

Senator Beck asked if the \$100 is for each child. Mr. McRae said it is just \$100 for an order. Senator Beck asked if a family has 5 children, would it be cheaper for them to pay this \$100 fine than an insurance policy for 5 children. Mr. McRae said an insurance policy at a place of employment is usually less than \$100 for a large family because it is fairly inexpensive to add dependents to a policy. Senator Beck questioned if the children are dependents of mothers and not the fathers, does the father get out of this. Mr. McRae said a father does not divorce his children, they are always dependents of his.

Representative Brown closed the hearing on HB 79.

CONSIDERATION OF HOUSE BILL 81: Representative Jan Brown, Helena, introduced HB 81 and presented amendments. (Exhibits 4 and 5)

PROPOSERS: Mr. John McRae, DOR, said the amendments were established after the House passed the bill. He explained the federal government passed a bill called the Omnibus Budget Reconciliation Act of 1984. He said this Act has caused the state of Montana to amend its law so it will comply with the federal law. He said sending an

order out of state could become modified because the order was not a final order. He said the amended bill will make each child support order or decree a final order or decree, so sending an order out of state will not be subject to modification.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 81: Senator Pinsoneault questioned how this would work in general. Mr. McRae said if someone was going to modify a support obligation, they would prepare a motion and that motion would have to be served on the opposing side. He said in present practice, a motion is served by mail and it is considered effective on mailing. He said the new bill would have the modification become effective when the individual receives the notice.

Senator Mazurek asked who has jurisdiction over a Montana decree if one party lives out of state. Mr. McRae responded there is an administration process for state-to-state child support, but the order must be a final order. Senator Mazurek asked how an order could be final when either party can go to court on the grounds that the order was unconscionable on either side. He said this would not be a final judgment. Mr. McRae said a child support obligation in Montana by district court cannot be modified retroactively. The federal law will stop all states from modifying orders retroactively.

Representative Brown closed the hearing on HB 81.

CONSIDERATION OF HOUSE BILL 82: Representative Jan Brown, Helena, introduced HB 82. (Exhibit 6)

PROPONENTS:

John McRae, DOR, explained what the law does now and explained what the bill would do. He said a problem right now is the state has the burden of collecting an unreduced child support payment. He said because the burden is on the state to collect, the recipient does not care about the case because the recipient is getting her money. The recipient, then, usually enters an agreement with the paying parent for certain things, like a material item, or just friendship. He said what results is these agreements terminate or limit the child support obligation. He stated this reduces the amount the state can collect to reimburse the AFDC that is paid out. He said this bill will correct this problem. He said if there is a modification in child support payments between the two parents, the parents have to, by this bill, inform the department. He said the bill will clarify the payment process to the recipients.

DATE Feb. 12th

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SENATE JUDICIARY
EXHIBIT NO. 4
DATE FEB. 12, 1
BILL NO. HB 81

SUMMARY OF HB81 (J. BROWN)
(Prepared by Senate Judiciary Committee staff)

HB81 is by request of the Department of Revenue and revises the laws relating to administrative enforcement of child support. The bill clarifies that child support orders may not be retroactively modified. The bill is requested to conform Montana law to federal requirements.

COMMENTS: The Department has requested an amendment that will be presented at the hearing.

C:\LANE\WP\SUMHB81.

Proposed Amendments to HB 81
(Proposed by Department of Revenue)

1. Title, lines 5 through 8.

Following: "AN ACT" on line 5

Strike: the remainder of line 5 through "MODIFIED" on line 8

Insert: "TO CONFORM MONTANA LAW WITH THE OMNIBUS BUDGET RECONCILIATION ACT OF 1984 BY PROVIDING THAT CHILD SUPPORT ORDERS, WHETHER ESTABLISHED BY ADMINISTRATIVE OR JUDICIAL PROCESS, MAY ONLY BE PROSPECTIVELY MODIFIED; PROVIDING THAT A MODIFICATION OF SUPPORT MAY BE EFFECTIVE ONLY FOR INSTALLMENTS ACCRUING SUBSEQUENT TO ACTUAL NOTICE OF THE MOTION FOR MODIFICATION"

2. Title, line 8.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 40-4-208 AND"

3. Page 1, line 12.

Following: line 11

Insert: "Section 1. Section 40-4-208, MCA, is amended to read:

"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1)

Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just

on the back

revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."
Renumber: subsequent sections

4. Page 2, line 6.

Following: "after"

Insert: "actual notice to the parties of"

7041f\c:\eleanor\wp:ee

Senator Yellowtail said the bill says if the hearing finds the supporting parent not guilty of not paying the insurance, the fine is taken away from his record. The motion carried to BE CONCURRED IN.

ACTION ON HOUSE BILL 81: Senator Halligan moved the presented amendments by Rep. Jan Brown. (see Standing Committee Report) The motion carried. Senator Halligan moved House Bill 81 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HOUSE BILL 82: Senator Crippen said there was an amendment by the Department of Revenue on this about preventing the retroactive modification of administrative order. Senator Mazurek said on page 2, line 6, following "after", insert "actual notice of modification". Senator Mazurek said this amendment would undo what the last legislature did. Senator Pinsoneault moved House Bill 82 BE CONCURRED IN, without amendments. The motion carried.

ACTION ON HOUSE BILL 335: Valencia Lane handed out amendments to HB 335. (Exhibit 7) Senator Halligan asked why the law just doesn't impound the vehicle. Senator Mazurek said it was less expensive operation with the barrel. Senator Mazurek felt the contract part should be in the title. Senator Bishop said he would rather have the barrel than tow the car away. Senator Pinsoneault moved to have the new (2) of the prepared amendments put into the bill, and delete the old (2). The motion carried.

Senator Halligan believed if someone is on private property, they will have to pay the consequences. Senator Yellowtail wondered if Rep. Pistoria would be happy about the towing away of his car. Senator Mazurek took a straw vote to see how many would like to see towing away of a car in the bill. Senators Mazurek, Yellowtail and Blaylock voted no. Senator Pinsoneault moved to delete sub (3) of the bill. The motion carried. Senator Halligan moved the rest of prepared amendments 1, 2 and 3. The motion carried. Senator Halligan moved House Bill 335 BE CONCURRED IN AS AMENDED. The motion carried.

ADJOURNMENT: The meeting adjourned at 12:00 noon.



SENATOR JOE MAZUREK, Chairman

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 4

37

19.....

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration..... **HOUSE BILL** No. **81**

third reading copy (blue)
color

Clarify that Admin. support order of DOR may not be retroactively modified.
Brown (Crippen)

Respectfully report as follows: That..... **HOUSE BILL** No. **81**

1. Title, lines 5 through 8.

Following: "AN ACT" on line 5

Strike: the remainder of line 5 through "MODIFIED" on line 8

Insert: "CONFORMING MONTANA LAW WITH THE OMNIBUS BUDGET
RECONCILIATION ACT OF 1984 BY PROVIDING THAT CHILD SUPPORT
ORDERS, WHETHER ESTABLISHED BY ADMINISTRATIVE OR JUDICIAL
PROCESS, MAY ONLY BE PROSPECTIVELY MODIFIED; PROVIDING THAT
A MODIFICATION OF SUPPORT MAY BE EFFECTIVE ONLY FOR
INSTALLMENTS ACCRUING SUBSEQUENT TO ACTUAL NOTICE OF THE
MOTION FOR MODIFICATION"

2. Title, line 8.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 40-4-208 AND"

3. Page 1, line 12.

Following: line 11

Insert: "Section 1. Section 40-4-208, MCA, is amended to read:
"40-4-208. Modification and termination of provisions
for maintenance, support, and property disposition. (1)
Except as otherwise provided in 40-4-201(5), a decree may be
modified by a court as to maintenance or support only as to

~~YES ONLY~~
DO PASS

CONFIRMED

Chairman.

installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Remember: subsequent sections

4. Page 2, line 6.

Following: "after"

Insert: "actual notice to the parties of"

70415\c:\cleanor\wp:ec

AND AS AMENDED BE CONCURRED IN